THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 21169 of 2007

Order:

This writ petition is filed seeking to direct the respondents to stop the departmental proceedings initiated against the petitioner, vide Memorandum No.X/SC/227/05/153/2007, dated 27.09.2007, pending criminal proceedings against one K. Babu, Head Constable No.267, on the file of the C.B.I. Court, Hyderabad.

The petitioner states that one K. Babu, Head Constable No.267, working at Kazipet, was trapped by the Central Bureau of Investigation, alleging that he accepted a bribe of Rs.15,000/- from one receiver of stolen property of the Railways, and registered a criminal case against the said K. Babu in R.C. No. 17(A)/2007 on the file of the C.B.I. Court, Hyderabad. He further states that based on the said criminal case filed against the said K. Babu, respondent No.1, vide impugned memo dated 27.09.2007, initiated departmental enquiry against the petitioner by framing five charges Aggrieved by the said action of the respondents in initiating departmental proceedings against him, based on a criminal case filed against one K. Babu, the petitioner filed the present writ petition.

The main contention of the petitioner is that he has nothing to do with the criminal case registered against one K. Babu, Head Constable, and that the respondents with a view to implicate him in the said criminal case, initiated departmental enquiry on the basis of the criminal case registered against the said K. Babu. He further contends that since the departmental proceedings arise out of the criminal case registered against the said K. Babu, the departmental enquiry initiated against the petitioner on the basis thereof, be stayed, else lot of

prejudice would be caused to him. He, however, submitted that the departmental proceedings may go on, but the respondents be directed not to pass final orders till the disposal of the criminal case registered against K. Babu. In support of this contention, he placed reliance on the judgment of the apex Court in **Kusheshwar v. M/s. Bharat Coking Coal Ltd.**[1] and of a Division Bench of this Court in **Andhra Bank Employees Co-op. Bank Ltd. v. K. Ram Babu**[2].

Heard the learned counsel for the petitioner.

According to the own admission of the petitioner, there is no criminal case registered against the petitioner and only departmental enquiry has been initiated against him for violation of certain service rules. May be, the departmental enquiry initiated against the petitioner, arises out of the incident, in respect of which a criminal case has been registered by the CBI against one K. Babu, Head Constable, but inasmuch as no criminal case has either been registered against the petitioner or is pending against the petitioner, he cannot be allowed to contend that the departmental enquiry initiated against him be stayed until the conclusion of the said criminal case registered against one K. Babu. The petitioner cannot assume for himself that the respondents with a view to implicate him in the criminal case registered against K. Babu have initiated the present disciplinary enquiry. Given the nature of charges framed against the petitioner, namely, (1) that he received a theft memo from SSE/NS/ELS/KZJ on 12.07.2007 regarding theft of Crane rope valued Rs.3,000/- but failed to register the theft case till 25.07.2007, (2) he failed to carry out the orders of superiors by not deploying

Sri K. Babu, HC 267 on different beats by rotation, thereby facilitating commission of wrongful acts by Sri K. Babu, (3) he interrogated two persons and even though he was satisfied that they had committed

crime against Railway property, he neither arrested them nor took any legal action against them, (4) he was preparing draft panchanama showing recovery of some property from two outsiders at some place which was false, and (5) due to his slack supervision, one of the staff working under him viz.,

Sri K. Babu demanded and was caught red handed by ACB/CBI/HYB while collecting Rs.15,000/- from an outsider, it can be said that the respondents are seeking to enquire into certain lapses on the part of the petitioner in the discharge of his duties under the service rules.

Since the departmental enquiry initiated against the petitioner, has nothing to do with the criminal case registered against one K. Babu, Head Constable, I see no reason whatsoever to stay the departmental proceedings, much less direct the respondents to defer the passing of the final order until the conclusion of the criminal case registered against K. Babu, Head Constable, with which the petitioner is not concerned, and more so when the law is well settled that criminal proceedings and departmental proceedings operate in different fields. I n ***LALIT POPLI Vs. CANARA BANK AND OTHERS***[3] the apex Court held that the Criminal and Departmental proceedings are entirely different and the standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. The relevant paragraph reads as under:

> "It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See ***State of Rajasthan Vs. B.K. Meena***[4]) In case of disciplinary enquiry the technical rules of evidence have no application. The

> doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."

Further, the Apex Court in ***AJIT KUMAR NAG Vs. GENERAL MANAGER (PJ), INDIAN OIL CORPN. LTD***[5], held that the two proceedings, criminal and departmental, are entirely different and they operate in different fields and have different objectives. The relevant portion reads as under;

> ".....The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability"....."

In view of the above, I find no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 2nd November 2007
KSR

[1] AIR 1988 SC 2118
[2] 2000 (1) ALT 68 (DB)
[3] 2003 (3) SCC 583
[4] (1996) 6 SCC 417 1996 SCC (L&S) 1455
[5] (2005) 7 SCC 764